## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:07cv346

DANIEL H. BRACKETT,	)
Plaintiff,	)
Vs.	ORDER
CONNIE WALKER; and UNITED STATES POSTAL SERVICE,	)
Defendants.	)

THIS MATTER is before the court on defendants' Motion to Substitute the United States and to Dismiss Named Defendants. In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), plaintiff, who is proceeding *pro se*, is cautioned that he carries a heavy burden in responding to a motion to dismiss. In this case, defendants contend that they are not proper defendants to this action and that the United States of America should be substituted as the correct defendant. In support of this request, the United States Attorney has certified that defendant Connie Walker was at all times acting within the scope of her employment when the alleged tort occurred. Further, the defendants have shown as a matter of law that federal agencies, such as the United States Postal Service, are not amenable to suit in tort. 28 U.S.C. § 2679(a).

Plaintiff is advised that the burden now shifts to him to refute this certification and prove to the court by a preponderance of the evidence that Defendant Walker was not acting within the scope of her employment. Specific evidence is required and

plaintiff cannot rely on conclusory allegations or speculation for failure to state a

cause of action.

The court will allow plaintiff 14 days from the date this order is entered to

make any such showing. Plaintiff is advised that if he fails to respond to defendants'

motion, the court will recommend that his claim be summarily dismissed. Finally,

plaintiff is advised that while he has a right to represent himself before the court,

litigants are better served in federal court where they are represented by attorneys.

**ORDER** 

IT IS, THEREFORE, ORDERED that plaintiff respond to defendants'

Motion to Substitute the United States and to Dismiss named defendants within 14

days of the filing of this Order.

Signed: October 30, 2007

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Dennis L. Howell

United States Magistrate Judge

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